

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MAURICE PATTERSON,)	
Plaintiff,)	Docket No. 11 C 7052
vs.)	
CITY OF CHICAGO, et al.,)	Chicago, Illinois
Defendants.)	April 11, 2012
)	9:35 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPEARANCES:

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1 (The following proceedings were had in open court:)

2 THE CLERK: 11 C 7052, Patterson v. City.

3 THE COURT: Good morning.

4 MS. KEEN: Good morning, your Honor; Roshna Keen for
5 plaintiff.

6 MS. THOMPSON: Julie Thompson for plaintiff.

7 MS. MC GRATH: Good morning, your Honor; Megan
8 McGrath on behalf of the City.

9 MR. GIVEN: Good morning, your Honor; Jeff Given
10 seeking leave to appear on behalf of the City.

11 MS. ROSEN: Good morning, your Honor; Eileen Rosen
12 seeking leave to appear on behalf of the individual defendant
13 police officers.

14 MS. MALOWITZ: Good morning, your Honor; Marni
15 Malowitz on behalf of defendant Kopina.

16 THE COURT: Have you always just represented one
17 person?

18 MS. MALOWITZ: Yes.

19 THE COURT: All right. So as far as filing
20 additional appearances, you have never had to file a motion to
21 do that. That's never been true in the whole 31 --

22 MR. GIVEN: Actually the local rule says it. We
23 looked it up because I wanted to be sure to do it right.

24 THE COURT: It's granted.

25 MR. GIVEN: 83-something says unless you're part of

1 the same firm, even if it's just additional, you have to file
2 a motion for leave.

3 THE COURT: Okay, fine. The motion is granted.

4 MR. GIVEN: Thank you, your Honor.

5 MS. ROSEN: Thank you, your Honor.

6 THE COURT: All right. So I'm going to deal with the
7 two discovery things, and let me just get the right material
8 in front of me here.

9 So the way I see this, there's basically I think it's
10 either four or five -- I guess five if you count the
11 protective order issue.

12 So just a second. Here we go.

13 And the order is going to be very general, okay. So
14 just listen carefully. On the issue of the personnel files,
15 there is no one right or wrong way of doing this. And my
16 experience in reading police department personnel files, which
17 is admittedly limited, is that there's a ton of stuff in there
18 that is absolutely irrelevant. There might be some things
19 that are relevant. So they're to be produced for in camera
20 inspection within ten days. I will determine whether there is
21 anything potentially relevant in them and I will order the
22 production of whatever is.

23 Let's see. The only downside to this thing is
24 flipping back and forth between your annotations. It requires
25 you to bring up menus and whatnot. The time period on the CR

1 files, 2010 seems -- going up to 2010 seems reasonable to me,
2 and that was the second issue, as I understood it.

3 The third issue had to do with categories of CRs and
4 my -- and although my inclination was, you know, originally to
5 tell you to give all this stuff to me to look at, I ain't
6 doing that. We're going to get to the rest of this in a
7 second.

8 And it is my experience that the way these things are
9 categorized doesn't always cover everything because there are
10 subissues and they have to pick a category, and it's not
11 always the right category, and so I'm not willing to limit the
12 categories, as the defense had argued.

13 The fourth issue has to do with the complaint
14 histories, and it kind of sounds like to me that those have
15 been produced. Have they, or are about to be?

16 MS. MC GRATH: Your Honor, what's been produced is
17 everything from what is called the gap history. So the five
18 years that were present when the lawsuit was filed plus five
19 years prior to that, and we're working to --

20 We have told counsel that we're working to get the
21 rest of those produced. We just haven't --

22 THE COURT: Okay. But, I mean, there doesn't seem
23 like there's a dispute over that; is there?

24 MS. THOMPSON: The only remaining dispute would be
25 with the time frame, as we have argued, going up to 2010.

1 THE COURT: Which I just said 2010 is the right time.

2 MS. MC GRATH: That has been produced.

3 THE COURT: So I don't think I have to decide
4 anything on that.

5 The fifth issue has to do with the interrogatories
6 about the requests to admit denials. So even though --

7 I'm going to rule in favor of the defendants on this,
8 but I do have to take issue with one thing. And everybody
9 always cites this sometimes fairly ancient or sometimes rather
10 obscure, with the exception of Wright & Miller, thing which
11 says Rule 36 is not a discovery procedure. I commend to your
12 attention the Rules of Civil Procedure, and there are little
13 headings. The heading that precedes Rule 26 says Disclosures
14 and Discovery. It's Title 5. There isn't another heading
15 until you get to Rule 38. That's Title 6 trials.

16 So requests to admit absolutely are discovery
17 devices. There is just no question about it. And the fact
18 that you might be able to find two judges out of the 700 of us
19 in the country that say otherwise, besides the fact that
20 Wright & Miller, neither of whom ever litigated a case in the
21 trial court, I might add, say that, it's just a bunch of
22 hokum. It's a discovery device.

23 That said, you don't need this. I mean, it's a
24 question of being reasonable here. And what you're looking
25 for is to make -- to basically make people commit on this

1 stuff twice. No. You ask them in the deposition.

2 Then the last thing is the protective order. I
3 don't --

4 So, first of all, what the state FOIA statute says
5 doesn't govern anything. And so I'm not going to get into
6 deciding what it says. Everybody seems to agree, and it's
7 true, that the standard for discovery is a federal standard.
8 You would certainly take into account confidentiality issues,
9 but it's not binding.

10 What the real dispute here seems to be about is
11 whether the information ought to be limited to use for this
12 case or ought to be usable for other purposes. That's the
13 real dispute here. And if you want to use stuff for other
14 purposes, then go file a FOIA request. The appropriate use of
15 discovery in litigation is for the litigation. That's my
16 view.

17 So the protective order is going to say it can only
18 be used for the litigation, period. None of it is to get
19 filed in the public record until there's an occasion to file
20 something in the public record. And if something that is in
21 these personnel files or complaint registers or complaint
22 histories or whatever is something that somebody needs to use
23 at some point, then I will decide then whether it should be in
24 the public record. So none of that stuff is to get filed in
25 the public record unless somebody asks me to.

1 And then the last thing is this thing about who gets
2 to look at it, and I agree with the plaintiff on this that,
3 you know, whatever undertakings, affidavits, you're calling
4 them, people should keep them for themselves because otherwise
5 you're being required to cough up the identity of your
6 consultants which you're not normally required to cough up.

7 So I think that basically deals with everything. If
8 there's something else that I missed, tell me; otherwise just
9 fiddle with the protective order along the lines of what I
10 said. Get it to me and I will sign it, and then we'll kind of
11 move ahead from there.

12 MS. MC GRATH: Your Honor, so you would like us to --

13 THE COURT: What I'm hoping that you can do is, now
14 that I have ruled on all this stuff, come up with an agreed
15 protective order. Nobody has given up their substantive
16 positions. It's just an agreement as to form.

17 Send it over on that e-mail address for orders. I
18 will enter it. And if I see a problem, I will let you know,
19 but I probably won't, and I will just enter it, and we'll go
20 ahead from there.

21 So what else has been happening?

22 MS. KEEN: I guess the only other thing we just want
23 to advise the Court, update the Court, I should say, is we
24 made a demand in the case a few weeks ago. And I see they
25 have -- the City has two private firms now retained. We have

1 not gotten a counter.

2 THE COURT: How long ago did you make the demand?

3 MS. KEEN: Maybe a month ago, approximately a month
4 ago.

5 THE COURT: Let me just look back here.

6 (Brief interruption.)

7 THE COURT: Yes. So what happened is I think --

8 I mean, I normally have people exchange settlement
9 proposals before, you know, much anything is done, but I think
10 people were still kind of trying to get the basic discovery
11 underneath, and I think it probably slipped through the
12 cracks.

13 MS. MC GRATH: Your Honor, I believe if that demand
14 was made, it probably went directly to Mr. Polick, and as
15 you're aware, he's been busy. So I will follow up with him
16 when I get back to the office and see.

17 THE COURT: Okay. So here's what I'd like you to do.
18 Why don't you respond to it within a couple of weeks, which
19 ought to be enough time. And then I'm going to give you a
20 status date in about four weeks, and we can talk about whether
21 there ought to be a settlement conference.

22 So let's say you're going to respond to the
23 settlement demand by the 25th. Give me just a second here to
24 page ahead.

25 MS. MC GRATH: 25th of May, your Honor?

1 THE COURT: Pardon?

2 MS. MC GRATH: 25th of May? April?

3 THE COURT: April. A couple of weeks ought to be
4 enough.

5 Yes. Let's see. May. Sorry, this thing takes a bit
6 to refresh here.

7 (Brief interruption.)

8 THE COURT: Okay. Come in, if you would, on -- if
9 you could come in on the 2nd of May at 9:00, that will be in
10 chambers. It will just be to talk about settlement. And then
11 I will give you another status then for later on.

12 What's going on discovery-wise?

13 MS. KEEN: We have requested --

14 I'm sorry. Go ahead, Julie.

15 MS. THOMPSON: It's okay.

16 THE COURT: Has anybody taken any depositions yet?
17 That's my main question.

18 MS. THOMPSON: We're starting them. They've been
19 noticed, and they're starting soon.

20 THE COURT: That's good. All right, because you've
21 got a ways to go yet on the discovery cutoff date. I just
22 wanted to make sure that everybody wasn't waiting until
23 October to start taking depositions.

24 So anybody else have anything you want to talk about?

25 MS. MC GRATH: Your Honor, just regarding the

1 personnel file, if you could -- I know you said the --

2 THE COURT: When?

3 MS. MC GRATH: -- order is going to be pretty vague,
4 but if the thing -- it would be really important that that
5 language is specifically in the order so we can expedite --

6 THE COURT: That what language is specifically in the
7 order?

8 MS. MC GRATH: That we need to produce it in ten
9 days.

10 THE COURT: Yes, okay. So we need to put in the
11 order that personnel files for the defendant officers are to
12 be provided for in camera inspection by the 23rd of April.

13 MS. MC GRATH: Thank you.

14 THE COURT: All right. You need an order, in other
15 words, to go back and give somebody.

16 MS. MC GRATH: Yes.

17 THE COURT: I got it. Okay, thanks.

18 MS. MC GRATH: Thank you.

19 MS. ROSEN: Thank you, your Honor.

20 MR. GIVEN: Thank you.

21 MS. THOMPSON: Thank you.

22 (Which were all the proceedings had in the above-entitled
23 cause on the day and date aforesaid.)
24
25

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript of the above-entitled matter.

/s/ *Laura M. Brennan*

April 18, 2012

Laura M. Brennan
Official Court Reporter
Northern District of Illinois

Date